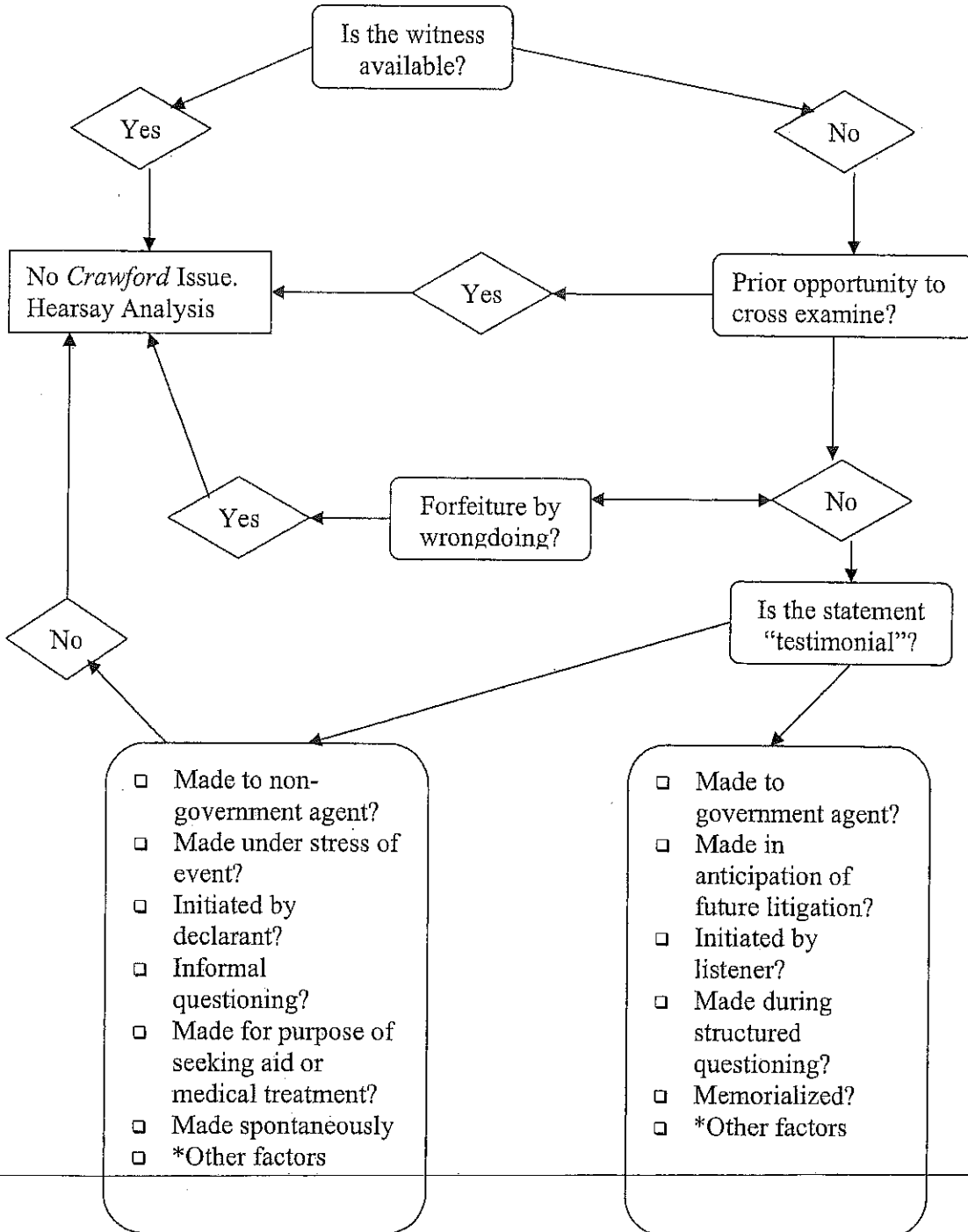


## CRAWFORD ANALYSIS FLOWCHART



\*Other Factors: See pg. 2, "Crawford Logic Tree"



## **CRAWFORD LOGIC TREE**

1. Is the witness available?
  - a. If yes--no Crawford issue, unless witness refuses to testify or frustrates cross-examination (memory loss is generally not frustration of cross examination), then go to "2."
  - b. If no--then (1) is the witness truly "unavailable" and (2) was there a previous opportunity for cross-examination on the statement
    - i. If yes to both clauses in "b," then no Crawford issue.
    - ii. If no to at least one clause in "b," then go to "2" unless you have forfeiture by wrongdoing in which case no Crawford issue.

### 2. Is the statement "testimonial"?

#### Factors Determining Whether a Statement is Testimonial

- a. To whom was the statement made
  - i. In what capacity was the listener acting
  - ii. Why did the listener hear the statement
  - iii. What was the effect of the statement on the listener?
- b. Circumstances of the making of the statement
  - i. Purpose of the statement
  - ii. Who else was around
  - iii. Who initiated contact with whom
  - iv. How was the statement made
  - v. Behavior of the declarant
- c. How was the statement memorialized?
- d. What was the statement?
- e. What was the result of making the statement?

### 3. Therefore,

- a. If the answer to "2" is yes, Crawford applies to bar the hearsay.
- b. If the answer to "2" is no, then no Crawford issue but perform hearsay analysis.

#### **For additional information, contact:**

The National Center for the Prosecution of Violence Against Women  
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## SAMPLE CRAWFORD PREDICATE QUESTIONS

Use the following questions to overcome a challenge to the introduction of:

- ☐ **excited utterance statements**
- ☐ **made by a victim**
- ☐ **to a police officer**

*Note: while these questions were designed for use in a pretrial hearing, they may be used during the direct examination of the police officer as well.*

1. What time were you dispatched?
2. How far away were you when you received the call?
3. How long did it take you to get to the location?
4. When you got to the location, what did you observe?  
(E.g., obvious recent injuries, property damage, any other indicia of recent violent incident)
5. When you got to the location, what, if anything, did you hear?  
(E.g., victim screaming at offender, victim screaming at no one in particular, children screaming, offender screaming)
6. Were you able to locate the victim of the offense?
7. Did you have an opportunity to speak to the victim?
8. How much time passed between the time you received the call and the time you spoke to the victim?
9. Describe the victim's physical condition at the time you were speaking to her.
10. Did the victim appear to you to be in pain?
11. What did you observe that led you to believe she was in pain?  
(E.g., bleeding, swelling, bruising, crying, rubbing arm, etc.)
12. Did the injuries appear to be recent?  
(E.g., still bleeding, etc)
13. Describe the victim's emotional condition at the time you were speaking to her.
14. What did you observe that led you to believe she was upset or excited?  
(E.g., trembling, shaking, crying, looking over shoulder, talking fast, breathless, etc.)



**SAMPLE CRAWFORD PREDICATE QUESTIONS**

15. At this time and in this condition, did the victim make any statements to you about what had happened?
  16. Describe the circumstances under which she made these statements.  
(E.g., she was standing in the yard or in her living room, middle of the night, wearing her nightgown, kids hanging to her legs, right after this occurred, still bleeding, crying, etc.)
  17. Did you Mirandize her?
  18. Were the statements sworn?
  19. Did you tell her that her statements could or would be used a trial?
  20. Was the victim in "police custody" at the time she made the statements?
  21. Was the victim a "potential suspect" in the case?
- 

**After asking the foundation questions listed above, proceed to part A or part B below:**

**PART A: If the victim blurted out statements to the officer and her statements were not in response to police questions:**

1. Were the statements taken during "the course of an interrogation"?
2. At this time, did the victim make any statements to you that were not in response to any questions?
3. What did she tell you?

**PART B: If the victim made statements in response to questions by the officer:**

1. Were the statements taken during "the course of an interrogation"?
2. What was the purpose of your questions?
3. Were your questions to her an interrogation or merely part of your initial investigation?



**SAMPLE CRAWFORD PREDICATE QUESTIONS**

4. Were these questions asked in order to determine whether a crime had even occurred?
5. What did you ask her?
6. What the victim say?
7. Then what did you ask her?
8. What did she say?

**For additional information, contact:**

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Special thanks to Cindy Dyer, Chief, Family Violence Unit, Dallas County District Attorneys Office for her role in developing these questions.



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